IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 525 OF 2005

M/s.Bhilwara Melba De Witte Ltd. ... Petitioner.

V/s.

1. The Union of India,

2. The Settlement Commission,
Customs and Central Excise. ... Respondents.

Prakash Shah i/b. DSK Legal for the petitioner.

P.S.Jetly for the respondents.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 27th April, 2005.

JUDGMENT : (Per V.C.Daga, J.)

. This petition raises an important question as to whether or not the interest is leviable on the additional duty of customs/ Counter Veiling Duty ("CVD" for short). In addition to this, the petition also raises two incidental questions, viz., (i) whether the Settlement Commission has inherent power to rectify the mistake in the final order; and (ii) whether or not the Settlement Commission has power to correct its accidental error since the submission that no interest was leviable on the additional duty of customs had escaped its attention in the final order.

Factual Matrix :

. The factual matrix giving rise to the present petition, in nutshell, can be summarised as under:

2. The petitioner is a public limited company registered under the Companies Act, 1956 engaged in the manufacture of automotive furnishing fabrics. The respondent No.2 is the Settlement Commission, a commission constituted by a notification issued under section 32 of the Central Excise Act, 1944 ("Excise Act" for short) for settlement of cases under the Customs and Central Excise.

3. The petitioner applied for and obtained Export Promotion Capital Goods Licence ("EPCG Licence" for short) dated 26th May, 1997 from the Director General of Foreign Trade ("DGFT" for short). This licence permitted the petitioner to import capital goods worth Rs.8,06,23,847/-. The petitioner, however, imported capital goods worth Rs.6,70,96,822/- only. Under the EPCG Scheme the petitioner was required to export 4 times the value of the capital goods imported against the EPCG Licence. The petitioner imported various capital goods availing the benefit of Notification

No.28/97-Cus. to the extent of the total duty payable in the sum of Rs.1,73,33,363/- (Basic Custom Duty Rs.66,94,272/- + CVD Rs.1,06,39,081/-). The petitioner could not fulfil export obligation imposed on it. Due to failure on the part of the petitioner to fulfil export obligation, the petitioner paid Rs.1,73,21,127/- voluntarily on 30th March, 2000 being the duty foregone by them at the time of import. Consequent to the payment of custom duty by the petitioner, the Customs Department of the respective port issued show cause notice to the petitioner proposing to- (a) demand duty foregone to failure to fulfil the export obligation in terms of section 28 of the Customs Act and/or by invoking the bond and LUT executed in terms of the Notification No.28/97-Cus; (b) confiscate the goods imported for contravention of section 111(o) of the Customs Act, 1962; (c) levy interest at the rate of 24% in terms of the Notification No.28/97-Cus from the date of imports till 30th March, 2000; and (d) impose penalty under section 112 of the Customs Act, 1962 for the contravention of section 111(o).

4. The petitioner filed three applications against three show cause notices before the Settlement Commission under section 127B of the

Customs Act, 1962 ("Customs Act" for short) accepting the duty liability. The Settlement Commission passed order dated 3rd July, 2001 admitting the three application filed by the petitioner and directed the petitioner to deposit balance amount of duty, in the sum of Rs.12,226/-. The petitioner complied with this order of the Settlement Commission by depositing Rs.12,226/- on 24th July, 2001. After compliance of the order dated 3rd July, 2001, the applications were heard finally by the Settlement Commission on 8th January, 2002.

5. At the time of final hearing, the petitioner submitted a detailed written submission explaining why it could not fulfil the export obligation and why no interest is leviable on the duty saved/foregone. The petitioner specifically stated in the application to the Settlement Commission that it had paid excise duty in cash (i.e. through Personal Ledger Account) to the extent of Rs.1,10,14,735/- for the period from February 1999 to August 1999. The petitioner in its written submission specifically urged that no interest should have been levied on the CVD since the same is available as Modvat credit under rule 57Q of the

Central Excise Rules, 1944 ("Excise Rules" for short) since the capital goods are/were used in manufacture of dutiable excisable goods i.e. processed fabrics.

6. The powers of Settlement Commission under section 127H, inter alia, permits it to waive interest leviable under the Act, either partially or completely. To substantiate the submission, the petitioner also shown details of excise duty paid by it in cash. Accordingly, the petitioner contended that no financial accommodation accrued to it and there was no loss of revenue to the Government in non-payment of additional duty of customs (CVD).

7. The Settlement Commission passed final order on 26th February, 2002 disposing of the three applications filed by the petitioner and granted all immunities sought for by the petitioner. The Settlement Commission was pleased to grant partial waiver of interest and directed the petitioner to pay interest at the rate of 10% per annum on the duty saved, comprising of both basic customs duty as well as additional duty of customs (CVD).

8. The petitioner after having gone through the aforesaid order entertained a belief that the Settlement Commission did not deal with its submission that no penalty was leviable on the CVD since the same was available as modvat credit and no financial accommodation was accrued to the petitioner. As such the petitioner vide its application dated 18th April, 2002 requested the Settlement Commission to rectify the mistake and pass an appropriate order. The Settlement Commission after considering the said application passed order dated 10th June, 2004 holding that the final order dated 26th February, 2002 was passed by it after considering all aspects and that there was no mistake or accidental error or omission crept in the final order dated 26th February, 2002.

9. Being aggrieved by the aforesaid part of the order dated 26th February, 2002; wherein the Settlement Commission had not dealt with the submission of the petitioner regarding waiver of interest on CVD and being aggrieved by the order dated 10th June, 2004 by which the Settlement Commission rejected the application of the petitioner for rectification of the order dated 26th February, 2002, the petitioner has invoked writ

jurisdiction of this Court under Article 226 of the Constitution of India to challenge the aforesaid orders and to contend that no interest could have been levied on the additional customs duty (CVD) and that the Settlement Commission ought to have corrected the accidental error crept in due to inadvertence since it has inherent power to rectify its error crept in the order.

Submissions :
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10. Mr.Shah, learned counsel for the petitioner submitted that in the case at hand the Settlement Commission did not give any finding on the point as to whether or not interest was leviable on CVD; even though this point was raised by the petitioner and noted by the Settlement Commission in its final order dated 26th February, 2002. Thus, in his submission, failure on the part of the Settlement Commission to deal with the said point and give finding on the submission of the petitioner that no interest is leviable on the CVD is a mistake or error apparent on the face of record. According to Mr.Shah, it is a well settled law that a point raised, argued and noted but not dealt with by the Court or the Tribunal is an error, which can be corrected by the Court or Tribunal. Similar powers

could have been exercised by the Settlement Commission even though it did not have power to review its own order.

11. Mr.Shah submits that as a general rule, a judgment; decree or final order made cannot subsequently be altered, varied, amended in any manner by the Court or the Tribunal which pronounced by it. However, there is well recognised exception to the said general rule, namely, that an act of the Court, which means and includes a Settlement Commission, shall not prejudice a party. Every Tribunal or a Court has an inherent jurisdiction to correct any error committed by itself.

12. Mr.Shah, learned counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of **Gindlays Bank Ltd. v. Industrial Tribunal**, 1980 (Supp) SCC 420; wherein the Apex Court considered the question as to whether the Tribunal constituted under the provisions of the Industrial Disputes Act has a power to set aside an ex-parte order in absence of express provision in the Act or the Rules framed thereunder. The Apex Court held that the Tribunal should be considered to be endowed with such ancillary or incidental powers

as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. The Apex Court, even though found that there was no express provision giving the Tribunal jurisdiction to set aside its ex-parte award, held that the Tribunal should be considered as invested with such incidental or ancillary powers.

13. Mr.Shah also relied upon the judgment of the Gujarat High Court in the case of **Ram Kirpal v. Union of India**, 1998 (103) ELT 8 (Guj); wherein the judgment of the Apex Court in the case of **Gindlays Bank** (supra) was followed. The Gujarat High Court also quoted extensively from the decision of **S.Nagaraj and others v. State of Karnataka and Another**, JT 1993 (5) SC 27. In para-18 of the said judgment the Apex Court has held as under:

> "Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle

be prejudiced from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order."

Mr.Shah also pressed into service para-19 of the

said judgment, which reads thus:

"Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and property made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts called out such power to avoid abuse of process or miscarriage of justice. In Raja Prithvi Chand Lal Choudhury v. Sukhraj Rai and Others, AIR 1941 Federal Court 1, the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the house of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rao v. Bijai Govind Singh 1 Moo PC 117 that an order made by the Court was final and could not be altered.

Nevertheless, if by misprision in embodying the judgments, errors have been introduced,

these Courts possess by Common law, the same power which the Courts of record and statute have of rectifying mistakes a made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistake introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced; or have added explanatory matter, or have reconciled inconsistencies."

The basis for exercise of power was stated in the

said judgment as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.

Thus, it becomes clear that the uppermost anxiety in the mind of the Court should be to do complete justice between the parties and when the Court finds that the mistake has crept in inadvertently, it is duty of the Court or Tribunal to correct it for doing complete justice between the parties. In view of the principle laid down by the Supreme Court in the above-quoted decisions, we are of the opinion that, the power of review is available to the Tribunal and it cannot be said that the order passed by the Tribunal is without jurisdiction."

14. Mr.Shah also placed reliance on the judgment of the Allahabad High Court in **Laxmi Electronic Corporation Ltd. v. C.I.T.**, (1991) 188 ITR 398 (All); wherein the Allahabad High Court considered a question as to whether a Tribunal could reopen an appeal if it finds that it has omitted to deal with an important ground urged by the party. It was held that such a power was inherent in Tribunal. Relevant portion of the said judgment is extracted hereinbelow:

> "By way of illustration, take a case where an assessee files an appeal raising four grounds, which he urges at the hearing of the appeal. The Tribunal, however, dismisses the appeal only on ground No.4. Would it not be open to the assessee in such a case to ask for reopening and rehearing of the appeal on the ground that the first three contentions urged by him have not been noticed or discussed by the Tribunal? We think that such power must be held to be inherent in the Tribunal, since it would be a case where the party has suffered prejudice for no fault of his but on account of a mistake or error on the part of the Tribunal. It is a well-settled proposition that an act of court (which, in the context, means and includes a Tribunal of the nature of the Income-tax Appellate Tribunal) should not prejudice a party. In such a case, it would not be just to drive the party to a reference under Section 256. It must be left to the Tribunal to reopen the appeal if it finds that it has omitted to deal with an important ground urged by the party."

Mr.Shah, thus, submitted that the Settlement Commission has inherent power to rectify the

accidental omissions/slips/errors committed by itself to the prejudice of the party, even in the absence of express provision in that behalf.

15. Mr.Shah, learned counsel for the petitioner, taking this Court through the judgment of the Apex Court in the case of **Gindlays Bank** (supra) urged that the expression "review" is used in two distinct senses, namely, (i) procedural review and (ii) review on merits. In procedural review the error can be corrected while in review on merits, however, no review lies on merits unless a statue specifically provides for it. Mr.Shah pressed in to service para-13 of the judgment in the case of **Grindlays Bank**; wherein the scope of the term "review" was examined by the Apex Court in the following words:

> "The expression "review" is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thackershi case held that no review lies on merits unless a statute specifically provides for it. Obviously, when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected

> ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."

Mr.Shah, relying on the aforesaid paragraph, submitted that procedural review is involved when an inadvertent error has crept in the order of the Court or Tribunal as such to prevent abuse of its process, the Court or the Tribunal has inherent power to rectify such errors. He submits that a review on merits may be invoked when the error sought to be corrected is one of law and such error is apparent on the face of the record. According to him, in such cases, the error must be glaring; apparent and non-debatable. The power to review on merits must be statutorily provided. He submits that the question whether a review is a procedural review or review on merits has to be decided on the basis of facts of each case. According to him, in the present case, the rectification of mistake sought by the petitioner would not amount to "review on merits" and hence the Settlement Commission has inherent power to rectify the mistake committed in the final order. He, thus, submits that the Settlement Commission could not have rejected the application for rectification moved by the petitioner.

16. Turning to the merits of the submission, without prejudice to his above submissions, Mr.Shah urged that even otherwise the Settlement Commission in its final order dated 26th February, 2002 could not have charged interest on CVD component in as much as the petitioner could have got the same back in the form of modvat credit and that no financial accommodation accrued to the petitioner because of deferring the payment of CVD. So far as basic customs duty is concerned, according to Mr.Shah, the petitioner did derive financial accommodation by not making the payment of duty at the time of importation. However, no such advantage was taken by the petitioner by non-payment of the component as CVD. In case the CVD was paid by the importer at the time of importation that amount could have made available to him immediately thereafter in the form of modvat credit which he could have utilised without any fetter. In the present case, that very amount was paid late as such belated payment of CVD did not give rise to the situation of financial accommodation which could be said to have been accrued to the petitioner. As such, according to Mr.Shah, no interest could have been ordered by the Settlement Commission in its final order dated 26th February, 2002. Mr.Shah, without prejudice to his

earlier submissions, thus, submits that the said order to the extent it awards interest on the CVD is liable to be quashed and set aside even though order dated 21st June 2004 rejecting application for rectification is held to be legal and proper.

17. Mr.Shah, learned counsel for the petitioner further submitted that, in fact, the Settlement Commission has passed orders in as many as in four cases holding that no interest is leviable on the additional customs duty (CVD) since the same is available as modvat credit to the importer. In all these four cases, according to Mr.Shah, the Settlement Commission has levied interest on the basic customs duty saved by the importer. He placed reliance on such four orders of the Settlement Commission, viz., (i) order dated 7th November, 2003 in the case of **Allied Asia Gears Ltd.**; (ii) order dated 30th October, 2003 in the case of **CG Glass Ltd.**, (iii) order dated 13th September, 2004 in the case of **SIEL Ltd.**; and (iv) order dated 15th March, 2004 in the case of **Lifelong Appliances**.

18. Mr.Shah, on the above canvas, submits that all the above four orders are subsequent to the order passed in the case of the petitioner. It

would be desirable to set aside the impugned order dated 21st June 2004 or, in the alternative, final order dated 26th February, 2002 by which interest was imposed on CVD and to remit the matter to respondent No.2 with direction to re-hear and decide the case of the petitioner afresh relating to complete waiver of interest on CVD in the light of the subsequent orders passed by the Settlement Commission itself referred to hereinabove.

19. Per contra, Mr.P.S.Jetly, learned counsel appearing for the revenue submitted that there was no error or slip in the final order passed by the Settlement Commission as contended by the petitioner since the final order has taken note of each point raised by the petitioner and, therefore, any order on the misc.application would amount to review by the Bench of its own earlier order. In his submission, there is no inherent power of review in favour of the Settlement Commission as such, the impugned orders passed by the Settlement Commission on both occasions are legal and proper. Mr.Jetly placed reliance on the observation made by the Settlement Commission in para-5 of its order dated 21st June, 2004; wherein the Settlement Commission, while commenting on the petitioner's submission

regarding its decision on leviability of interest on CVD in its order dated 26th February, 2002, observed as under:

> "..... We observe that the findings in that order start with the following sentence: "The points urged have been considered." This means that there was no accidental error or slip due to inadvertence which could be seen in the silence of Bench on the issue of interest on CVD. Rather it seems to be a conscious decision of the Bench not to consider the waiver of interest on the addition duty of customs (CVD)."

20. According to Mr.Jetly, the final order cannot be tinkered with through a miscellaneous application as it would mean changing of the very basis of the order and would amount to review of its own order which none of the provisions of law or case laws quoted by the petitioner permits the Commission to do so. He, therefore, submits that the application for rectification was rightly rejected by the Settlement Commission vide its order dated 21st June, 2004. Mr.Jetly submits that the submission of the petitioner that the point regarding charging of interest on CVD, which was raised, argued, noted but not considered, is not at all correct since the Settlement Commission in its order dated 21st June, 2004 in para-5 has recorded specific finding observing that there was no accidental slip or inadvertant error as such no

interference with the said order is warranted in exercise of writ jurisdiction of this Court.

21. According to Mr.Jetly, in the final order dated 26th February, 2005 the Settlement Commission has squarely dealt with the issue in para-4 of the operative part of the order and after taking due note of the submissions made, and upon consideration of the facts of the case, the Settlement Commission has ordered that interest at the rate of 10% instead of 24% per annum as per Notification No.28/97-Cus. should be paid by the petitioner. Hence, in the submission of Mr.Jetly, there is no mistake or error on the part of the Settlement Commission. Mr.Jetly, however, submits that the question whether or not the Settlement Commission has inherent jurisdiction to correct the error committed by itself, in this case, does not arise since the Settlement Commission itself has clearly stated that the points raised and urged were considered by it and hence there is no mistake on the part of the Settlement Commission. Mr.Jetly, thus, submits that the question raised needs no consideration in this case since the question itself does not arise in the factual backdrop of the case in hand.

22. Mr.Jetly further submits that the provision of Notification provides levy of interest for non-fulfillment of export obligation. The Handbook of Procedure of EXIM Policy 1992-97 prescribes that the importer shall execute legal undertaking before clearance of goods through Customs. The legal undertaking would be for an amount equal to the value of export obligation imposed plus the value of duty saved plus the interest @ 24% per annum for export obligation period plus six months. According to him, the petitioner had also executed LUT Bond which incurred obligation on it to pay the customs duty (which includes CVD) along with interest @ 24% per annum from the date of clearance of the goods till the date of payment of duty. He, thus, submits that the petitioner's claim to waive the interest on CVD portion is not proper. Mr.Jetly, in support of his submissions, placed reliance on the judgment of this Bench in the case of **M/s.Pratibha Syntex Ltd. v. Union of India**, 2003 (157) ELT 141 (Bom); wherein this Bench has held that once the petitioner has committed breach of terms of the exemption notification, the customs authorities were entitled to enforce the declaration with bond and legal undertaking given by the petitioner and to recover customs duty with interest.

23. Mr.Jetly also tried to support the imposition of interest on CVD by the Settlement Commission and again placed reliance on the judgment of this Bench in the case of **Hi-Tech Engineers v. Union of India**, 2003 (161) ELT 96 (Bom.) to contend that the Settlement Commission had jurisdiction to grant interest. Mr.Jetly urged that this Court not being a Court of appeal against the order of the Settlement Commission, it can only examine the legality of the procedure and not the validity of the order. In support of his submission, he relied upon the decision of this Court in the case of **Santogen Textile Mills Ltd. v. Union of India**, 2002 (143) ELT 289 (Bom.) to which one of us is party (Daga, J.). He further submits that the said decision found favour with the Apex Court as such this Court should not examine the merits of the impugned order.

24. Mr.Jetly also urged that although ground for rectification, namely, an error on the face of record may be common to a power for review, however,the nature of power to be exercised in two cases is distinct. He placed reliance on the decision of the Apex Court in the case of

Commissioner of Central Excise, Vadodara v. Steelco Gujarat Ltd., 2004 (163) ELT 403 (SC) and pressed into service para-8 of the said order reading as under:

> "Although the ground for rectification, namely, an error on the face of the record may be common to a power for review, the nature of the power to be exercised in the two cases is distinct. The power of review is not limited to rectification and is wider than the power conferred under Sec.35C(2). We are unable to hold that the error was a manifest one which could admit of no dispute. It was a debatable point which was raised, and the conclusion of the Tribunal in the impugned order clearly shows that it has considered the question from the point of view of the sufficiency of the material to justify the demand raised. In the circumstances of the case we allow the appeals and set aside the impugned order of the Tribunal. We are told that the respondent has in the meanwhile filed a reference application under Sec.35G of the Act before the Tribunal. In view of our order, the Tribunal can now hear and dispose of that application as expeditiously as is conveniently possible. There will be no order as to costs.

25. Mr.Jetly, lastly, submitted that the petition is devoid of any substance and the same is liable to be dismissed with costs.

Consideration :
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26. Having heard rival parties, we do not think it necessary for us to decide larger questions raised by the rival parties as to whether or not the

interest is leviable on the additional duty of customs (CVD); or whether or not the Settlement Commission has inherent power to rectify the mistake or error crept in its final order due to inadvertence. The petition can be decided on the narrow issue based on the facts which are not in dispute.

27. Both the parties agree that subsequent to the final order passed by the Settlement Commission dated 26th February, 2002 in the case of the petitioner, the Settlement Commission has taken different view in as many as 4 cases holding that no interest is leviable on the additional duty of customs (CVD) as the same is available as modvat credit to the importer. In these four cases the Settlement Commission has levied interest only on the basic customs duty saved by the importer.

28. On the issue of waiver of interest, the learned counsel for the petitioner contended that no interest should be levied on the CVD component of the duty demanded in terms of conditions mentioned in the Notification No.28/97-Cus. dated 1st April, 1997. In support of his submission he relied upon final order of the Additional Bench of Mumbai

Settlement Commission in the case of **M/s.C.G.Glass Limited, Baroda** being Order No.60/Cus/2003 dated 30th October, 2003; wherein the importer in similar application had requested for total waiver of the interest on CVD which was considered and granted by the Commission. The relevant extract of the aforesaid order reads as under:

> "So far as interest is concerned, we are inclined to grant total immunity to the applicant from payment of interest on the CVD portion of the Customs duty inasmuch as that the applicant has not enjoyed any financial accommodation by belated payment of CVD. CVD is nothing but taking from one hand and giving back to an assessee from another hand. In case the CVD was paid by the applicant at the time of importation, that amount would have become available to the applicant immediately thereafter in the form of Modvat credit which the applicant could have utilized without any fetter. That very amount has been paid late and thus, the applicant would get Modvat credit also late and thus in our considered view belated payment of CVD is not a situation of financial accommodation which accrued to the applicant. We grant immunity to the applicant from payment of interest in excess of 10% so far as on basic Customs duty is concerned. This means that the applicant shall pay interest @ 10% p.a. on the basic Customs duty from the date of importation when the duty became payable till the date the duty was actually paid by the applicant. ....."

29. The learned counsel for the petitioner also cited other judgments of the Settlement Commission; wherein identical orders were passed by it holding that no interest was leviable on the CVD component

on the ground that the importer could have got advantage of claiming modvat credit had it paid duty on CVD components. As such no advantage was derived by the importer i.e. the applicants in those cases because of deferred payment of CVD.

30. The aforesaid factual and undisputed facts unequivocally reveal that two contradictory views of the Settlement Commission are holding the field. The Settlement Commission, subsequently, could not have taken contrary view contrary to its earlier view without distinguishing the same. In the case of **Chandigarh Admn. vs. Jagjit Singh**, (1995) 1 SCC 745, Apex Court held:

> "Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be a ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of other persons might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in case of the petitioner....."

Wherever it is possible the Court should direct appropriate authority to examine such order in accordance with law.

31. In the above view of the matter, it would be in the interest of justice first to grant fair

opportunity to the Settlement Commission to deal with this peculiar aspect of the matter. In the event, two contradictory views continue to hold the field, then this Court will certainly be able to deal with the contentions more effectively. In that event, this Court will have an opportunity to have the views of the commission on the rival contentions of the parties. It was expected on the part of the commission to deal with the questions raised, argued and noticed by it in little detail. Had it been so done, this Court would have got opportunity to read the mind of the commission.

32. In **Woolcombers of India Ltd. v. Workers Union**, AIR 1973 SC 2758, the Apex Court was dealing with an award of an Industrial Tribunal. Apex Court found that the award stated only the conclusions and it did not give the supporting reasons and in that connection it was observed:

> "The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by the reasonable man

> and will discard irrelevant or extraneous considerations. Second, it is a well-known principle the justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this court by special leave granted under Article 136. A judgment which does not disclose the reasons will be of little assistance to the Court."

33. In the above view of the matter, we quash and set aside the final order dated 26th February 2002 passed by the Settlement Commission to the extent it grants interest at the rate of 10% per annum on the additional duty of customs (CVD) and remit the matter back to the Settlement Commission for consideration afresh following principles of natural justice with direction to pass a reasoned order dealing with the rival contentions raised herein or that may be raised before it at the time of hearing.

34. In view of the course adopted by us, as already stated, it is not necessary for us to decide larger question raised by the rival parties regarding levy of interest on the additional duty of customs (CVD). The said question is left open for consideration in a proper case. So far as the issue

raised with regard to the legality and validity of the order dated 21st June, 2004, whereby the application or rectification was rejected by the Settlement Commission, is concerned, it has become academic, in view of the order of remand.

35. In the result, the final order dated 26th February, 2002 passed by the Settlement Commission to the extent it grants interest at the rate of 10% per annum on the additional duty of customs (CVD) is quashed and set aside. The matter is remitted back to the Settlement Commission for consideration afresh. The Settlement Commission is directed to decide the matter within three months from the date of receipt of copy of this order.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**